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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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| In re Application of: | ) Atty. Docket: ICB0184 |
| | ) Confirmation No. 9595 |
| Christophe BERTHAUD | ) |
| | ) Group Art Unit: 2672 |
| Serial No. 09/631,413 | ) |
| | ) Examiner: Jin Cheng Wang |
| Filed: August 3, 2000 | ) |
| | ) Date: May 23, 2005 |
| For: WATCH INCLUDING A CONTACTLESS CONTROL DEVICE FOR A COMPUTER CURSOR | ) |

**REPLY BRIEF**

**MAIL STOP: REPLY BRIEF**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully submits this Reply Brief under 37 C.F.R. §41.41 with respect to the above captioned application. The present Reply Brief addresses and responds to the Examiner's Answer, mailed March 24, 2005 in response to Applicant's Appeal Brief filed November 15, 2004.

**Applicant's Rebuttal Arguments**

The independent claims are claims 1, 10 and 13. Applicant has argued the patentability of the independent claims and the subject matter of dependent claim 16 as separate issues (Appeal Brief at 16, line 12, to 22, line 21).

1. **The combination of references fails to disclose or suggest the claimed "means for detecting:"** Applicant argued the prior art does not teach, or even suggest, a

"means for detecting the speed of a user's finger over said outer element or the actuation frequency of successive sensors" as recited in claim 1 (Appeal Brief at 13, line 23, to 14, line 1, and at 17, lines 3-5). The Examiner, who admits that neither the Teres Patent nor the Olsen Patent teach a "means for detecting" (Examiner's Answer at 6, lines 11-12), does not assert that the Ferrari Patent teaches such an element. Instead, the Examiner argues that from the teachings of the Ferrari Patent it would be evident the actuation frequency of sensors, as the user's finger or fingertip actuates/deactuates on a plurality of sensors, would generate X and Y outputs that depend on the displacement and pressure of the user's finger or fingertip on the touch sensitive pad so the actuation frequency of the sensors depends on the user's rate of lifting/pushing of sensors by the finger or fingertip away/towards the sensors (Examiner's Answer at 7, line 9, to 8, line 5). The Examiner reasons that cursor movement on the computer screen would thus be controlled by the user's rate/speed/frequency of lifting/pushing finger (i.e., the user's speed of movement of a fingertip), (Examiner's Answer at 8, lines 5-8).

The Examiner's argument fails to establish the prior art teaches a separate "means for detecting" in accordance with the present invention. Instead, the Examiner postulates that the device taught by the Ferrari Patent operates to control cursor movement based on the speed of the user's finger on an outer element without using a "means for detecting." Therefore, the Section 103 rejection standing against claim 1 of the present application, and based on the combined teachings of the Teres Patent, the Olsen Patent, and the Ferrari Patent is untenable because these prior art references do not teach, or event suggest, the "means for detecting" in combination with the remaining elements recited in claim 1.

2. **The combination of references does not disclose or suggest cursor movement depending on concentric zones activated:** The prior art does not teach, or even suggest, the embodiment wherein "said sensitive pads are arranged in concentric zones" and "the direction of movement of said cursor [is] determined by the orientation of the orientation of the pad or pads actuated relative to the centre of said concentric zones, and...the speed of movement of said cursor depends upon the concentric zones actuated or two adjacent concentric zones which are actuated simultaneously" as recited in claim 10 (Appeal Brief at 17, lines 3-6, and at 18, line 19, to 19, line 11. The Examiner improperly asserts that the Ferrari Patent teaches this feature recited in claim 10 (Examiner's Answer at 14, lines 2-5).

The Examiner's position is clearly untenable because the Ferrari Patent is limited to teaching a sensing cell array formed by sensing cells arranged by row and column as repeatedly acknowledged by the Examiner (Examiner's Answer at 6, lines 14-18, and at 7, lines 16-22, and at 13, lines 14-17, and at 15, lines 12-18). Thus, the array taught by Ferrari is a Cartesian array, which neither teaches nor suggests an array having concentric zones. Furthermore, even if the teachings of Ferrari, which pertain to row/column arrays, could be applied to the polar coordinate arrangement of sensors taught by the Teres Patent, it would not teach or suggest that "the speed of movement of said cursor depends upon the concentric zones actuated or two adjacent concentric zones...actuated simultaneously" as recited in claim 10. In particular, the row/column sensing cell array taught by Ferrari

Patent has no "concentric zones;" therefore, it cannot reasonably teach anything about how sensors arranged in concentric zones would operate.

Therefore, the Section 103 rejection standing against claim 10 of the present application, and based on the combined teachings of the Teres Patent, the Olsen Patent, and the Ferrari Patent is clearly untenable because these prior art references do not teach, or event suggest, the "sensitive pads are arranged in concentric zones" and "the direction of movement of said cursor [is] determined by the orientation of the orientation of the pad or pads actuated relative to the centre of said concentric zones, and...the speed of movement of said cursor depends upon the concentric zones actuated or two adjacent concentric zones which are actuated simultaneously" in combination with the remaining elements recited in claim 10.

3. **The combination of references does not disclose or suggest "second control means for selecting an object shown...or carrying out a command:"** Applicant argued the prior art does not teach, or suggest, the combination of a (i) "first control means for controlling movement of a cursor on a computer screen" and (ii) "second control means for selecting an object shown on said screen or carrying out a command" as recited in claim 13 (Appeal Brief at 19, line 19, to 20, line 11). The Examiner argues the Teres Patent teaches a "second control means," such as electrode (S) forming part of a sensor as shown in Figures 2 and 3 of the Teres Patent (Examiner's Answer at 14, lines 6-11).

The Examiner's argument plainly fails to establish that the Teres Patent teaches a "second control means for selecting an object shown on said screen or carrying out a

command." As admitted by the Examiner, the Teres Patent does not teach movement of a cursor on a computer screen (Examiner's Answer at 4, line 18). Additionally, Applicant has argued the Teres Patent also does not teach selecting an object on the computer screen or carrying out a command (Appeal Brief at 10, lines 17-21). While the Examiner contends the Teres Patent teaches a "second control means for selecting an object...or carrying out a command," but not a "first control means for controlling movement of a cursor on a computer screen," the burden rests on the PTO to show where in the Teres Patent there is the explicit or implicit teaching or suggestion regarding the "second control means." See In re Rijckaert, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993).

In the present case, the Examiner indicates Figures 1 to 5 and cols. 1 to 5 of the Teres Patent as containing the explicit or implicit teaching or suggestion relied upon by the Examiner (Examiner's Answer at 14, lines 6-11). The Examiner is attempting to obfuscate the fact that there is no specific teaching in the reference by citing the entire reference, i.e., every word, every figure, and putting the burden on the Applicant to search for this non-existent teaching. It is plain the Teres Patent does not teach, or suggest, a "second control means for selecting an object...or carrying out a command" because the Examiner cannot indicate where in this reference this subject matter is found, and it cannot, in fact, be found.

Applicant has argued that the Olsen Patent and Ferrari Patent are limited to teaching sensors for generating signals controlling movement of a cursor on a computer screen (Appeal Brief at 16, line 16, to at 17, line 2), and the Examiner has made no

argument that either one of these references teaches a "second control means for selecting an object shown on said screen or carrying out a command." Applicant contends that none of the prior art references teaches selecting an object on the computer screen or carrying out a command as is the function of the "second control means" recited in claim 13. Therefore, the Section 103 rejection standing against claim 13 of the present application, and based on the combined teachings of the Teres Patent, the Olsen Patent, and the Ferrari Patent is untenable and must be withdrawn.

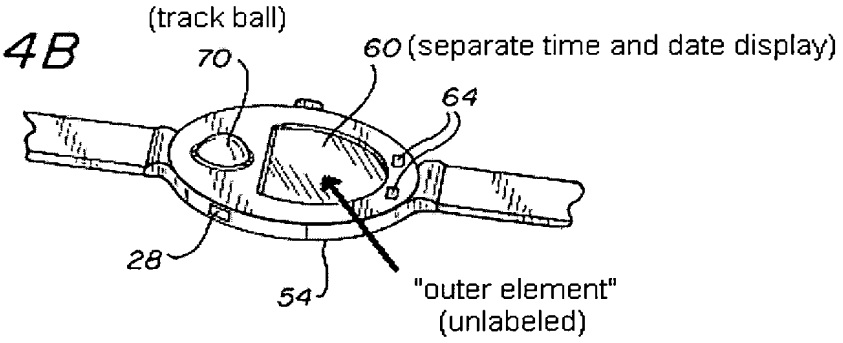
4. **The combination of references does not disclose or suggest the second control means formed by said outer element associated with a pressure sensor:** Applicant argued the embodiment recited by claim 16 includes a "second control means for selecting an object shown on said screen or carrying out a command" wherein the "second control means are formed by said outer element associated with a pressure sensor," which is not taught by the prior art (Appeal Brief at 21, lines 11-14). Since claim 16 depends on claim 11, which depends on claim 10, all arguments made with respect to claim 10 apply to claim 16 as well (Appeal Brief at 21, lines 8-16). Furthermore, because claim 16 incorporates the "second control means for selecting an object shown on said screen or carrying out a command" recited in claims 11 and 13, the arguments made with respect to claim 13 also apply to claim 16.

The Examiner argued that the Olsen Patent teaches a "second control means" such as a trackball formed by a pressure sensor (Examiner's Answer at 14, lines 12-14). However, there is nothing in the Olsen Patent to teach, or even suggest, that a trackball

would be used in combination with touch sensitive sensors for controlling a computer and its display screen.

The Examiner's argument is plainly untenable for the following reasons. First, claim 16 recites that the "second control means are formed by said outer element associated with a pressure sensor." From claim 10, upon which claim 16 indirectly depends, it is clear the "outer element" covers the "display means" or forms an "outer portion of the display means." Second, Fig. 4B of the Olsen Patent illustrates a "trackball" (70) and a "display" (60). To facilitate a rapid understanding of these relationships, Fig. 4B is reproduced below, with labels added.

FIG. 4B




As is plain from Fig. 4B above, assuming, *arguendo*, a "track ball formed by a pressure sensor" is taught by the Olsen Patent (See Examiner's Answer at 14, lines 12-14)(which is clearly not taught), the "track ball formed by a pressure sensor" cannot be the "second control means" recited in claim 16 of the present application because (1) the track ball is not an "outer element" and (2) the track ball neither covers the "display" nor forms an outer portion of the "display." Furthermore, the "outer element" of claim 16, which

depends upon claim 10, must be "partially transparent" and "the touch sensitive pads are supported at least partially by said outer element" so these features are additional reasons why the "track ball" taught by the Olsen Patent cannot reasonably be construed to be the "second control means" recited in claim 16. Also, claim 16 of the present application recites that "selection of an object or said command...being performed by applying pressure onto said outer element." Since the "track ball" taught by the Olsen Patent is not an "outer element" in accordance with claims 10 and 16, it is irrelevant whether the track ball taught by the Olsen Patent can be used to perform a select and click function.

Finally, it is evident that the embodiment recited by claim 16, which depends upon claim 10, includes (i) "a plurality of touch sensitive sensors," and (ii) a "pressure sensor" associated with the "outer element." The prior art references simply do not teach a device having both "touch sensitive sensors" and a "pressure sensor" as required by claim 16 of the present invention. In fact, Applicant has argued that the Olsen Patent, in Fig. 4C, teaches away from associating the "outer element" with a pressure sensor (Appeal Brief at 12, lines 9, to 13, line 10). The Examiner has evinced no reasonable argument in rebuttal of Applicant's argument.

Therefore, for a multitude of reasons, the Section 103 rejection standing against claim 16 of the present application, and based on the combined teachings of the Teres Patent, the Olsen Patent, and the Ferrari Patent is untenable and must be withdrawn.

**Conclusion**

The rejection under 35 U.S.C. § 103 of claims 1, 10, 13 and 16 of the present application as unpatentable over the combination of the Teres Patent, the Olsen Patent and the Ferrari Patent is plainly untenable and should be withdrawn because none of the prior art references teach, or even suggest, either alone or in combination (i) the "means for detecting the speed of a user's finger over said outer element or the actuation frequency of successive sensors" as recited in claim 1; (ii) the direction of movement of the cursor depends on "the concentric zones actuated or two adjacent concentric zones which are actuated simultaneously" as recited in claim 10; (iii) the "second control means for selecting an object shown on said screen or carrying out a command relating to said object" as recited in claim 13; and (iv) the "second control means for selecting an object shown on said screen or carrying out a command relating to said object...wherein said second control means are formed by said outer element associated with a pressure sensor" as recited in claim 16.

For all of the above reasons, the Examiner's rejections should be reversed by the Board, and the appealed claims allowed.

Respectfully submitted,

GRIFFIN & SZIPL, PC

Joerg-Uwe Szipl
Registration No. 31,799

GRIFFIN & SZIPL, PC
Suite PH-1
2300 Ninth Street, South
Arlington, VA 22204
Telephone: (703) 979-5700
Facsimile: (703) 979-7429
Customer No.: 24203